

CERTIFIED TRANSLATION FROM THE POLISH LANGUAGE

CERTIFIED COPY

TAS8/S/2012

**ARBITRAL AWARD
OF THE ARBITRATION TRIBUNAL**

given in Warsaw on May 13, 2013

The Adjudication Panel of the Arbitration Tribunal for Sport at the Polish Olympic Committee in Warsaw, composed of:

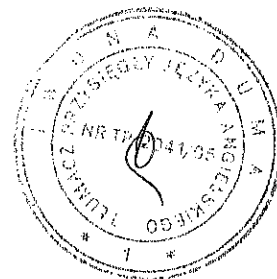
Presiding Arbitrator **Piotr Nowaczyk**
Arbitrators: **Romana Troicka-Sosińska**
 Maciej Laszczuk

acting under Article 13.2.2. of the Model Anti-Doping Rules adopted by the Polish Athletic Federation by way of a resolution of August 13, 2011,

having examined the appeal lodged by the World Anti-Doping Agency (WADA) versus the Polish Athletic Federation and Anna Wloka against the decision given by the Polish Athletic Federation on June 19, 2012,

adjudicates as follows:

1. the decision of the Polish Athletic Federation of June 19, 2012 is partially amended so that the player Anna Wloka is sanctioned with a one-year period of ineligibility;
2. the period of ineligibility of the player Anna Wloka from January 28, 2012 until the date of giving this arbitral award is included in the overall period of ineligibility imposed;
3. the remainder of the appeal is dismissed;



4. pursuant to § 92 clause 4 of the Rules of the Arbitration Tribunal for Sport at the Polish Olympic Committee, the final court fee shall amount to PLN 4,000, which

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~~shall be payable in full to the Arbitration Tribunal for Sport at the Polish Olympic Committee;~~

5. the Polish Athletic Federation is ordered to pay to the World Anti-Doping Agency (WADA) the amount of PLN 2,000 as a partial refund of the costs of the proceedings.

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THE ORIGINAL BEARS THE APPROPRIATE SIGNATURES

[round seal with a logo in the middle and the following circumscription:]

ARBITRATION TRIBUNAL FOR SPORT

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SECRETARY

OF THE ARBITRATION TRIBUNAL

FOR SPORT AT THE POLISH OLYMPIC COMMITTEE

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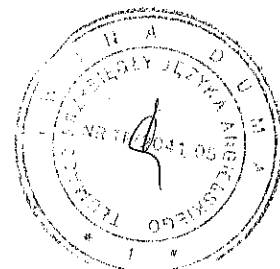
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Repertory No.: 1135/05/2013

I, the undersigned, Iwona Duma, sworn translator of the English language registered on the list of sworn translators of the Ministry of Justice under number TP/2041/05, hereby certify that the above text is a true and complete translation of the Polish document presented to me.

Number of strokes and pages (1125 strokes per page): 1925 strokes (2 pages of translation)

Warsaw, May 21, 2013.



CERTIFIED TRANSLATION FROM THE POLISH LANGUAGE

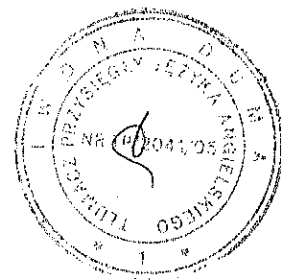
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STATEMENT OF GROUNDS

THE FACTS

1. At its meeting on April 2, 2012, the Commission for Distinctions, Discipline and against Doping of the Polish Athletic Federation (hereinafter referred to as the “**Commission**”), as a first instance disciplinary body, instituted an investigation procedure in the case of Anna Wloka, the player of the LUKS Podium Kup Sports Club.
2. In the letter of February 20, 2012, the Polish Athletic Federation (hereinafter referred to as “**PAF**”) was notified by the Polish Commission against Doping in Sport that during the Polish Junior Athletics Indoor Championships, which took place in Spała between January 26 and January 29, 2012, Anna Wloka tested positive for a substance called *methylhexaneamine*, which is prohibited in-competition. It was also found that Anna Wloka was not granted an individual permission to use it for healing purposes prior to the Championships. Samples were taken for analysis on January 28, 2012.
3. According to the statement made by the trainer Jacek Dziuba and the player Anna Wloka – the prohibited substance entered the player’s body following the taking of a dietary supplement delivered by the trainer himself.
4. By a Disciplinary Decision No. 2/2012 of May 14, 2012, the Commission for Distinctions, Discipline and against Doping decided to sanction the player Anna Wloka with a 3-month ineligibility starting from January 28, 2012. In imposing this sanction, the Commission took into account the following special mitigating circumstances:



- a. The player underwent regular anti-doping tests, with all results of her former prohibited substance tests being negative;
- b. The player received the supplements from her trainer and took them in good faith and believing that in doing so she did not violate any anti-doping regulations;

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- c. The substance found only slightly improves competitive results, which means that taking it for doping purposes is useless.
5. With its decision of June 19, 2012, the Commission for Distinctions, Discipline and against Doping, having re-examined the case of Anna Wloka, decided to extend the period of ineligibility to 6 months starting from January 28, 2012 and ending on July 28, 2012.
 6. The appeal against the decision of the Polish Athletic Federation of June 19, 2012 was lodged by the World Anti-Doping Agency (hereinafter referred to as "WADA") on August 8, 2012.

JURISDICTION OF THE ARBITRATION TRIBUNAL

7. Article 13.2.2. of the Model Anti-Doping Rules adopted by the Polish Athletic Federation by way of a resolution of August 13, 2011, states as follows:

In cases involving national-level athletes subordinate to the Commission against Doping in Sport that do not have the right to appeal under Article 13.2.1, the decision may be appealed against to an independent and impartial national appeal body, i.e. the Arbitration Tribunal for Sport at the Polish Olympic Committee.

8. Article 13.2.3 of the Model Anti-Doping Rules, in cases referred to in Article 13.2.2, authorizes WADA to lodge appeals with the Arbitration Tribunal for Sport at the Polish Olympic Committee.



STATEMENT OF LEGAL GROUNDS FOR THE DECISION OF THE ARBITRATION TRIBUNAL

9. The Polish Athletic Federation is obliged to observe the anti-doping regulations adopted by the Commission against Doping in Sport, which is an independent organization to struggle against doping in the Republic of Poland. On April 8, 2004, the Commission adopted the World Anti-Doping Code and has been applying anti-doping regulations within all kinds of anti-doping tests. The Model Anti-Doping Rules were adopted by the Polish Athletic Federation by way of a resolution of August 13, 2011.

10. The fundamental principle laid down in Article 2.1 of the Model Anti-Doping Rules says that:

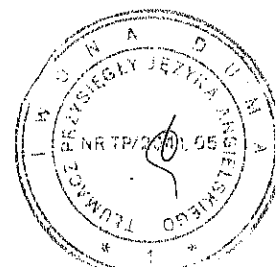
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2.1.1 It is each athlete's personal duty to ensure that no prohibited substance enters his or her body. Athletes are responsible for any prohibited substance or its metabolites or markers found to be present in their samples. Pursuant to Article 2.1, it is not necessary that intent, fault, negligence or knowing use on the athlete's part be demonstrated in order to establish an anti-doping violation.

11. Methylhexaneamine is a prohibited substance classified under "S6 (b)" of the 2012 WADA Prohibited List, which means that its use is prohibited in-competition. In the case concerned, Anna Wloka did not challenge the presence of the prohibited substance in her sample, but claimed she was not at fault and had no intention to use the substance to improve her competitive results during the Championships.

12. In principle, a player should incur a two-year period of ineligibility for the first anti-doping violation (Article 10.2 of the Model Anti-Doping Rules).



13. The Model Anti-Doping Rules provide for a number of exceptions to the general rules. In the case concerned, the question of the absence of fault or the degree of such fault on the part of Anna Wloka, and therefore also an option to eliminate or mitigate the sanction, should have been considered.
14. According to Article 10.5.1 of the Model Anti-Doping Rules, for lift of the sanction of ineligibility to be possible, an athlete has to demonstrate the absence of all guilt or negligence on his or her part. When a prohibited substance or its markers or metabolites are detected in the athlete's sample in violation of Article 2.1 of the Model Anti-Doping Rules (Presence of a prohibited substance), the athlete must also establish how the prohibited substance entered his or her system in order to have the period of ineligibility eliminated. In the commentary to this regulation it is pointed out that *"the sanction could not be completely eliminated on the basis of no fault or negligence in the following circumstances: (...) (b) the administration of a prohibited substance by the athlete's personal physician or trainer without disclosure to the athlete (athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any prohibited substance)"*. In light of the aforesaid, the Adjudication Panel decided that the criteria for elimination of the sanction for the violation of the anti-doping rules had not been met.

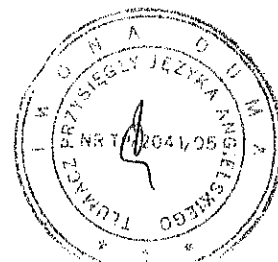
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15. One of the circumstances mitigating the sanction under **Article 10.5.2. of the Model Anti-Doping Rules** is the absence of any significant fault or negligence. According to that regulation, the sanction imposed may reduced by no more than a half of the otherwise applicable sanction. The regulation states as follows:

If an athlete can establish that he or she bears no significant fault or negligence, the otherwise applicable period of ineligibility may be reduced by no more than a half. If the otherwise applicable period of ineligibility is lifetime, the reduced period under this Article may be no less than (8) years. When a prohibited substance or its markers or metabolites are detected in an athlete's sample in violation of Article 2.1 (Presence of a prohibited substance or its



metabolites or markers), the athlete must also establish how the prohibited substance entered his or her system in order to have the period of ineligibility reduced.

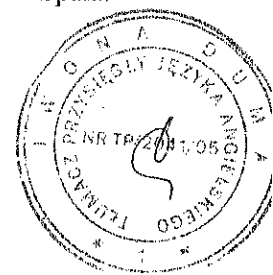
16. The circumstances of the case make it clear that neither Anna Wloka nor her trainer Jacek Dziuba intended to violate any anti-doping rules. However, it is beyond any doubt that the prohibited substance – methylhexaneamine – was found to be present in the body of Anna Wloka.
17. The prohibited substance was administered to the player by her trainer – Jacek Dziuba. In the course of the proceedings before the Adjudication Panel and in her statement made in the course of the proceedings before the Commission, the player submitted that she was unaware of the fact that she was taking methylhexaneamine. She trusted her trainer, whom she had known since she was a child, to the extent that she was sure that he would not give her any substance that could harm her in any way. A 4-year disciplinary penalty in the form of a ban to pursue a profession of trainer was imposed on the trainer Jacek Dziuba.
18. In assessing the degree of fault on the part of Anna Wloka for the violation of the anti-doping rules, it was worth noting the statement of the player, in which she stated in a clear and coherent manner that she played as an amateur and received no remuneration for that. This, in turn, implies that any behaviour or negligence on the part of such players may not be treated in the same manner as in the case of professional athletes.
19. In determining the presence of fault and its degree, the individual circumstances of the player should also be considered. Anna Wloka stated that on the day of the competition she was a heavy favourite to win the gold medal. She scored 16.00 m, which gave her gold. The next player scored 14.50 m, which makes an enormous difference

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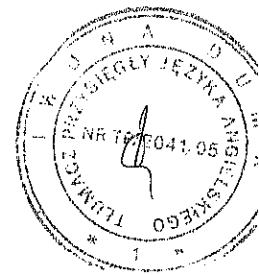
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in shot put competitions. During the meeting in Brzeszcze two weeks before the competition in Spała, the player scored 16.24 m in shot put, a much better result than the one in Spała.



Anna Wloka had, therefore, no purpose or need to take any doping substances to improve her competitive results on the day of the competition. Her statement is also supported by the conclusion contained in the first decision of the Commission for Distinctions, Discipline and against Doping of May 14, 2012, in which the Commission decided that the substance found in the player's body had but a weak effect of improving competitive results, and thus taking it for doping purposes was useless. The player had, therefore, no causative motive in taking the prohibited substance. In the judgement of the Adjudication Panel, this motive is all the less probable that Anna Wloka underwent anti-doping tests during numerous competitions and she was sure that on the day of such important competitions as the ones in Spała she would be required to undergo anti-doping tests as well.

20. The aforementioned circumstances, as the ones proving the absence of significant fault or negligence in violating the anti-doping rules by Anna Wloka, were in the end also confirmed by WADA, the appellant, which submitted that the sanction of ineligibility could be reduced from 2 years to no less than 12 months (vide WADA letter of April 22, 2013).
21. Finally, it should be recognized that following the control tests and the finding of methylhexanamine in the player's body – Anna Wloka did not challenge the test results and, thus, admitted that the substance could be present in her body.
22. Article 10.5.2 of the Model Anti-Doping Rules requires an assessment of circumstances which are specific and relevant to the case and which explain a player's departure from the expected standard of behaviour. Young age and lack of experience are relevant factors in determining the fault, especially in the case of inexperienced or amateur athletes. The Adjudication Panel has considered these circumstances in the case concerned and decided that a 1 (one) year ineligibility sanction would both have an educational role and would be an appropriate sanction for the violation committed.
23. In light of the aforesaid, the Adjudication Panel found that the appeal lodged by WADA should be granted in part and decided to change the decision of the Polish Athletic Federation of June 19, 2012 as stated hereinabove.



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24. The Adjudication Panel ordered the Polish Athletic Federation to pay WADA the amount of PLN 2,000 (two thousand) as a refund of the costs of the proceedings, considering that given the outcome of the case the costs should be relatively separated. Following settlement of the cost of translation, the remaining amount of PLN 2,200 (two thousand two hundred) will be refunded to WADA within the procedure laid down in the Cost Rules of the Arbitration Tribunal for Sport.

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THE ORIGINAL BEARS THE APPROPRIATE SIGNATURES

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SECRETARY
OF THE ARBITRATION TRIBUNAL
for SPORT at the Polish Olympic Committee

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Repertory No.: 1136/05/2013

*I, the undersigned, Iwona Duma, sworn translator of the English language registered on the list of sworn translators of the Ministry of Justice under number TP/2041/05, hereby certify that the above text is a true and complete translation of the Polish document presented to me.
Number of strokes and pages (1125 strokes per page): 12208 strokes (11 pages of translation)*

Warsaw, May 21, 2013.

